

FEB 20 2006

PAGE 134 • RCV'D AT 2/20/2006 1:25:00 AM [Eastern Standard Time] • SVR:USPTO-EFXP-6/24 • DMS:2/38300 • CSID: • DURATION (MM-SS):12-18

PTO/SB/21 (09-04)

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TRANSMITTAL
FORM

		Application Number	09/872,914
		Filing Date	06/01/2001
		First Named Inventor	FERDINAND SCHERMEL
		Art Unit	3727
		Examiner Name	STEPHEN J. COSTELLANO
(to be used for all correspondence after initial filing)		Attorney Docket Number	
Total Number of Pages in This Submission		34	

ENCLOSURES (Check all that apply)

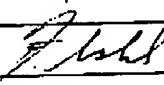
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		
RCE of 27 pages text 41 page drawings RCE FORM, CREDIT CARD PAYMENT FORM		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name			
Signature			
Printed name	FERDINAND SCHERMEL		
Date	FEB 18/06	Reg. No.	

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Typed or printed name	FERDINAND SCHERMEL		

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Request
for
Continued Examination (RCE)
Transmittal

Address to:
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Application Number	09/872,914
Filing Date	06/01/2001
First Named Inventor	F. SCHERMEL
Art Unit	3727
Examiner Name	STEPHEN J. COSTELLO
Attorney Docket Number	

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
ii. Other _____

b. Enclosed

i. Amendment/Reply iii. Information Disclosure Statement (IDS)
ii. Affidavit(s)/ Declaration(s) iv. Other _____

2. **Miscellaneous**

Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. Other _____

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to

a. Deposit Account No. _____ I have enclosed a duplicate copy of this sheet.

i. RCE fee required under 37 CFR 1.17(e)
ii. Extension of time fee (37 CFR 1.136 and 1.17)
iii. Other _____

b. Check in the amount of \$ _____ enclosed
c. Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature	<i>Ferdinand Schermel</i>	Date	FEB 18/06
Name (Print/Type)	FERDINAND SCHERMEL	Registration No.	

CERTIFICATE OF MAILING OR TRANSMISSION

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Signature	<i>Ferdinand Schermel</i>	Date	FEB 18/06
Name (Print/Type)	FERDINAND SCHERMEL	Registration No.	

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RCE6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number 09/872,914
Appn. Filed 06/01/2001
Applicant Ferdinand Schermel
Title Tilttable Modular Recycle Container System
Examiner Stephen J. Costellano
Art Unit 3727

AMENDMENT G Feb 18, 2006

Assistant Commissioner for Patents total no. of pages of text 27
Washington, D.C. 20231 total no. of pages of drawing 4

Sir:

In response to Appeal 2005-2495 date mailed Dec 20/06

The applicant is filing an RCE to the claims and specification to be considered with respect to the appeal.

Summary of Appeal

The results of the appeal is that all rejections were not sustained except for the 35 U.S.C 112 support for the 55 inch base perimeter of the wheeled container, and also the 35 U.S.C.103(a) for the same 55 inch base perimeter. Scaling was considered inappropriate in the 112 rejection and there was a lack of written descriptive support. For the 103 rejection, which stated that "No criticality has been assigned to the 55 inch perimeter dimension" the appeal board stated that "This reasoning is flawed from the outset, however, because the Tiramani system does not involve trash containers. Moreover, it is of no moment that the limitations in question may not be critical. Claims are not legally required to include critical limitations." This limitation was originally added to obviate over the prior art, but is not deemed necessary by the board. The applicant proposes to remove limitation of criticality for the 55 inch base perimeter as well as requests the examiner to reconsider the drawing and claim objections with respect to the ruling by the board of new matter not being added, to place the application in condition for allowance.